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SUPREME COURT OF THE UNITED STATES.

No. 140.

SAMUEL HILDEBURN, PLAINTIFF,

vs.

HENRY TURNER.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR MISSISSIPPI.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

SAMUEL HILDEBURN, plaintiff,
vs.
HENRY TURNER, defendant,

Circuit court U. S., May term, 1844.

Be it remembered, that this cause coming on to be tried, on this 11th day of May, A. D. 1844, before us, Peter V. Daniel and Samuel J. Gholson, judges of said court, presiding, the plaintiff produced and read to the jury the bill of exchange sued on, in the following words and figures, to wit:

"Dolls. $995\frac{04}{100}$ CANTON, *Mi., Jan'y* 1, 1840.

Twelve months after date, please pay to the order of Henry Turner, esq'r, in New Orleans, at the Merchants' Bank there, nine hundred and ninety-five dollars and four cents, for value received, and charge the same to account of yours, &c.,

A. G. BENNETT.

To Mr. HENRY F. BENNETT,
Canton, Mi.

Accepted—HENRY F. BENNETT.

Endorsed—"Pay Sam'l Hildeburn or order.
HENRY TURNER."

Pay to the order of A. H. Wallace & Co., New Orleans.
SAM. HILDEBURN."

And thereupon the plaintiff offered to read to the jury the notarial protest of said bill for non-payment, which was in the following words, to wit:

J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known, that on this fourth day of January, in the year one thousand eight hundred and forty-one, at the request of the Merchants' Bank of New Orleans, holder of the original, whereof a true copy is on the reverse hereof written, I, Jules Mossy, a notary public, in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, presented said draft to the proper officer at the Merchants' Bank, where the same is made payable, and demanded payment thereof. I was answered that the same could not be paid. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of said draft, as against all others whom it *or* may concern, for all exchange, re-exchange, damages, costs, charges and interests, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of George Lanaux and Jas. P. Gilly, witnesses.

In testimony whereof, I grant these presents, under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.
[L. S.]

(Signed) JULES MOSSY, *Notary Public.*

Dolls. $995\frac{04}{100}$. CANTON, *Mi.*, *Jan'y* 1, 1840.

Twelve months after date, please pay to the order of Henry Turner, esq'r, in New Orleans, at the Merchants' Bank there, nine hundred and ninety-five dollars and four cents, for value received, and charge the same to account of yours, &c.,

A. G. BENNETT.

To Mr. HENRY F. BENNETT,
Canton, Miss.

Accepted—H. F. BENNETT.

(Endorsed.) "Pay Samuel Hildeburn, or order.
HENRY TURNER."

"Pay to the order of A. H. Wallace & Co.
SAM'L HILDEBURN."

"A. H. WALLACE & Co."

I, the undersigned notary, do hereby certify, that the parties to the draft, whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of the said protest, and served on them respectively, in the manner following, viz: on A. G. Bennett, drawer—Henry Turner, Sam'l Hildeburn, and A. H. Wallace & Co., endorsers, by depositing in the post-office, in this city, on the day of said protest, the one for A. G. Bennett, addressed to him at Madison co., near Canton, (Miss.); the one for Henry Turner, at Palmyra, (Miss'i); the one for Sam'l Hilde-

burn, at Philadelphia, (Pa.) ; and by delivering the one for A. H. Wallace & Co. to themselves, on the day and date below written.

In faith whereof I have hereunto signed my name, together with George Lanaux and James P. Gilly, witnesses, at New Orleans, this fifth day of January, eighteen hundred and forty-one.

(Signed) G. LANAUX,
J. P. GILLY,
JULES MOSSY,
Not. Pub.

I certify the foregoing to be a true copy of the original protest on record in my office. New Orleans, this 2nd November, 1842.
[L. S.]
JULES MOSSY, *Not. Pub.*

To the reading of which protest the defendant, by his attorney, objected, upon the ground that said protest did not contain a sufficient statement of the presentment of the bill for payment; upon which objection the said judges did not agree, but divided in opinion; whereupon the cause was continued, and said question ordered to be certified to the Supreme Court of the United States for decision; which is now done.

Given under our hands and seals, this 11th day of May, 1844.

P. V. DANIEL, [SEAL.]
S. J. GHOLSON. [SEAL.]

UNITED STATES OF AMERICA,
Southern district of Mississippi:
Circuit court U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing is a true copy of the certificate of difference of opinion in said case, ordered to be certified to the Supreme Court of the United States, at the May term, 1844, of said circuit court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Jackson, this 30th day of September, A. D. 1844.
[L. S.]

W. H. BROWN, *C'lk.*

Filed, 9th December, 1844.